

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FOREST GILLIAM,

Plaintiff,

V.

RONALD HOLT, *et al.*,

Defendants.

CIVIL NO. 1:CV-07-0359

(Judge Caputo)

ORDER

Plaintiff, Forest Gilliam, formerly an inmate at the Schuylkill Federal Correctional Institution in Minersville, Pennsylvania, commenced this *pro se* action by filing a *Bivens*¹ civil rights complaint (Doc. 1). Presently pending is Defendants’ “Motion to Dismiss Plaintiff’s complaint, or, in the alternative, for Summary Judgment.” (Doc. 11). Although Plaintiff’s opposition to the motion is overdue, he has neither made an appropriate filing nor requested an extension of time in which to do so.

A dispositive motion generally may not be granted merely because it is unopposed. Since Local Rules of Court must be “construed and applied in a manner consistent with the Federal Rules of Civil Procedure,” *Anchorage Assoc. v. Virgin Islands Board of Tax Review*, 922 F.2d 168, 174 (3d Cir. 1990), the disposition of an unopposed motion ordinarily requires a merits analysis. The United States Court of Appeals for the

1. *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). *Bivens* stands for the proposition that “a citizen suffering a compensable injury to a constitutionally protected interest could invoke the general federal question jurisdiction of the district court to obtain an award of monetary damages against the responsible federal official.” *Butz v. Economou*, 438 U.S. 478, 504 (1978).

Third Circuit has stated, however, that Middle District of Pennsylvania Local Rule 7.6 can be applied to grant a motion to dismiss without analysis of the complaint's sufficiency "if a party fails to comply with the rule after a specific direction to comply from the court."

Stackhouse v. Mazurkiewicz, 951 F.2d 29, 30 (3d Cir. 1991).

Middle District of Pennsylvania Local Rule 7.6 provides that if a party fails to file an opposing brief within fifteen (15) days after service of the movant's brief, the motion will be deemed unopposed. Based on his failure to take any action with respect to Defendants' motion, it would appear that Plaintiff may have abandoned interest in pursuing this matter. However, the court will grant additional time for the Plaintiff to respond to Defendants' motion, and direct him to file a brief in opposition within fifteen (15) days from the date of this order. If Plaintiff fails to oppose the motion or otherwise communicate with the court within fifteen (15) days of the date of this order, the Court will deem the motion unopposed.

Because Defendants have styled their motion as a "Motion to Dismiss, or, in the alternative, for Summary Judgment," Plaintiff is advised that he must oppose the motion as required by M. D. Pa. L. R. 56.1.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT Plaintiff shall file his opposition to Defendants' Motion (Doc. 11) within fifteen (15) days of the date of this order. If Plaintiff fails to file his opposition, the Court will deem the motion unopposed.

November 8, 2007


A. RICHARD CAPUTO
United States District Judge